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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

MARCH 17, 1997

DOCKET NO. 96-375-C - ORDER NO. 97-211 ✓

IN RE: PETITION OF AT&T COMMUNICATIONS)	ORDER
OF THE SOUTHERN STATES, INC. FOR)	ON
ARBITRATION OF AN INTERCONNECTION)	ARBITRATION
AGREEMENT WITH GTE SOUTH, INC.)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Petition ("Petition") of AT&T Communications of the Southern States, Inc. ("AT&T") for arbitration of an interconnection agreement with GTE South, Inc. ("GTE") (AT&T and GTE are herein collectively known as the "Parties"). The Petition was filed pursuant to the Telecommunications Act of 1996 (the "Act"). AT&T filed its Petition on or about November 25, 1996, pursuant to §252 of the Act. Upon the filing of the Petition, the Commission established a procedure for the arbitration (See Commission Order No. 97-39) and properly noticed the docket and the pending hearing. The Consumer Advocate for the State of South Carolina (the "Consumer Advocate") and the South Carolina Cable Television Association ("SCCTA") were allowed to participate in the arbitration (these parties were not Parties of Record or Intervenor; see Commission Order No. 97-70). The Parties in this matter filed testimony and a list of outstanding issues

to be arbitrated by the Commission. As well, both Parties and the two Participants filed lists of suggested examination questions with the Commission.

GTE filed a Motion objecting to the Commission's established procedures. AT&T filed a reply brief in response to GTE's Motion. The Commission heard oral arguments on this Motion at the beginning of the BellSouth/AT&T Arbitration on February 3, 1997. The Commission denied the Motion (See Commission Order No. 97-138).

An arbitration hearing was held on this matter February 5 - 7, 1997, in the Commission's hearing room. The Honorable Philip T. Bradley, Vice-Chairman, presided. Catherine D. Taylor, Staff Counsel, assisted in the examination during the hearing. Francis P. Mood, Esquire, Kenneth P. McNeely, Esquire, and Steve A. Matthews, Esquire, represented AT&T. Steven W. Hamm, Esquire, Morris L. Sinor, Esquire, Andrew Shore, Esquire, and William Fleming, Esquire, appeared on behalf of GTE. Elliott F. Elam, Jr., Esquire, represented the Consumer Advocate; and B. Craig Collins, Esquire, represented SCCTA. The two hearing participants, pursuant to Commission Order, were not allowed to present testimony or witnesses in the proceeding.

AT&T Communications presented the following witnesses:

- (1) Joseph Gillan
- (2) Dr. David L. Kaserman
- (3) Richard Guepe
- (4) Art Lerma
- (5) John M. Hamman
- (6) Mike Guedel
- (7) Don J. Wood
- (8) Jaimie Hardin

GTE presented the following witnesses:

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|---------------------------|---------------------------|
| (1) Eugene A. Pearson | (8) Douglas E. Wellemeyer |
| (2) Douglas N. Morris | (9) Michael J. Doane |
| (3) Michael L. Dellangelo | (10) Bert I. Steele |
| (4) William E. Munsell | (11) Dennis B. Trimble |
| (5) Kirby D. Cantrell | (12) Rafi A. Mohammed |
| (6) Scott C. Mitchell | (13) Mike Drew |
| (7) Donald W. McLeod | (14) Thomas D. Agase |
| | (15) Larry Gaskin |

Section 252 of the Act provides for voluntary negotiations between requesting carriers and incumbent local exchange carriers. If parties are unable to reach agreement on the terms of an appropriate interconnection agreement, then either party may request arbitration by the State Commission. Pursuant to §262(b)(4) of the Act, this Commission is to resolve each issue set forth before it.

GTE and AT&T provided to the Commission a listing of the outstanding issues for arbitration by the Commission. Accordingly, the Commission has ruled upon each of these issues in the identical order of the listing. The outstanding issues and the Commission's decision upon each are set forth below.

(1) Must GTE offer for resale to AT&T at wholesale rates all of GTE's retail telecommunications services?
What services provided by GTE, if any, should be excluded from resale?

AT&T argues that requiring GTE to make all services defined by the Act available for resale will benefit South Carolina consumers. Such action by the Commission would provide South Carolina consumers the ability to select the

local service provider of their choice without loss of any services to which they presently subscribe.

The Commission adopts AT&T's position on this issue with one exception. The Commission holds that the Act requires GTE to offer for resale to AT&T at wholesale rates all telecommunications services that GTE provides at retail to non-carrier subscribers. These services include:

- (a) services priced (allegedly) below cost;
- (b) promotional offerings - the wholesale discount shall apply to the promotional rate if the promotion exceeds 90 days but shall apply to the regular retail rate if the promotion is less than 90 days;
- (c) public pay telephone lines;
- (d) semi-public pay telephone lines;
- (e) voice mail and inside wire services;
- (f) services that already priced at allegedly wholesale rates (such as special access and private line services under the special access tariff, COCOT coin and coinless lines);
- (g) operator and directory assistance services;
- (h) non-recurring charge services; and
- (i) in-contact (Advanced Intelligent Network) services.

However, contract service arrangements ("CSAs" or "special assemblies") should not receive a further discount below the contract service arrangement rate. AT&T should receive the same rate as the CSA customer. AT&T will still be allowed to

package the service with other services in order to compete with GTE or other local entrants.

Resale of these services will insure that all GTE customers will have choices for all services presently received from GTE. The Act indeed permits reasonable and non-discriminatory conditions or limitations on the resale of telecommunications services, and we therefore condition our ruling with respect to the CSAs. CSAs are designed to respond to specific competitive challenges on a customer-by-customer basis. We believe that the contract price for these services has already been discounted from the tariffed rate in order to meet competition.

(2) Must GTE be prohibited from imposing restrictions on the resale of GTE services?

Until further order of this Commission, we hold that the present tariff restrictions for GTE services shall remain in place since there has been no showing that the restrictions set forth in GTE's tariffs are unreasonable and/or discriminatory. The Commission allows GTE to apply any use or user restriction or term or condition found in the relevant tariff of the service being resold when it resells that service to wholesale customers. Resale of GTE's retail services shall be subject to the terms and conditions currently contained in the resale service tariffs. Upon Petition to this Commission, AT&T may challenge any terms and conditions which it contends are unreasonable or discriminatory. No new restrictions have been proposed for or will be implemented upon the resold services. Cross class

selling is specifically prohibited. The Commission also adopts the interLATA joint marketing restriction found in the Act (§271(e)(1)).

(3) (Original issue No. 6) Must GTE route directory assistance and operator services calls directly to AT&T's Platform?

The Commission adopts AT&T's position on this issue. GTE is to route AT&T customers for operator and directory assistance to AT&T. GTE shall utilize the line class codes as recommended by AT&T on a first-come, first-serve basis. Such routing will allow a customer to have his or her calls routed to the operators of such customer's chosen local service provider. GTE and AT&T are encouraged to continue their efforts to develop a long-term solution to the selective routing issue since line class codes may potentially be exhausted. We find that customized routing is technically feasible.

(4) (Original issue No. 10). Must GTE provide AT&T access to GTE's directory assistance data base?

This issue is resolved except for the pricing considerations (please see Nos. 16 and 17 below).

(5) (Original issue No. 13) Must GTE execute a "change as is" service order when a GTE customer requests to switch to AT&T local service on an "as is" basis and utilize a blanket letter of authorization for the change?

We hold that the parties shall utilize this Commission's established procedures for changing presubscribed interexchange carriers ("PICs") and apply them to changes of

local service providers. When a customer changes his or her local service provider, the customer will be switched "as is." We believe that these procedures are proven, and we seek to make the customer's transition convenient and unconfusing.

(6) (Original issue No. 14) Should GTE be required to recover in a competitively neutral way the costs of development and implementation of any systems or processes required by the Act?

The party requesting development and implementation of a system or process should pay for the developmental cost. However, if other parties benefit from the development, these parties should share the cost. AT&T would then be refunded a proportionate share of these costs from the other benefiting parties.

(7) (Original issue No. 15) Must GTE provide AT&T access to each of the following unbundled network elements requested by AT&T, including all of the features, functions and capabilities of each element?

- Network Interface Device ("NID")
- Loop Distribution
- Loop concentrator/multiplexer
- Loop feeder
- Combined loop
- Local Switching
- Operator Systems/Directory Assistance
- Dedicated transport
- Common transport
- Tandem switching
- Signaling link transport
- Signal transfer points
- Service control points/databases

Yes. (See No. 10 below for further discussion.)

(8) (Original issue No. 16) Should AT&T be allowed to combine unbundled network elements in any manner it chooses, including recreating existing GTE services, or combining unbundled network elements with one another or with resold services or with AT&T's or a third party's facilities?

AT&T may recombine unbundled network elements in any manner it chooses. However, the rebundling of network elements to produce an existing retail service is a pricing issue and is under the jurisdiction of this Commission. If network elements are rebundled to produce an existing tariffed retail service, the appropriate price to be charged to AT&T by GTE is the discounted retail price (wholesale price). AT&T should be required to pay to GTE the applicable wholesale rate of the replicated service and not just the rates for the unbundled network elements that are purchased.

Finally, the Commission concludes that vertical features inherent in the unbundled local switching element are themselves retail services and, thus, should be priced at the retail tariffed rate less the appropriate discount and not priced as part of the switching component.

(9) (Original issue No. 17) Must GTE make rights-of-way and collation capacity available to AT&T on terms and conditions equal to that it provides itself?

The Commission adopts AT&T's position on the right-of-way issue. GTE shall provide to AT&T equal and non-discriminatory access to rights-of-way, conduit, pole attachments, and other pathways on terms and conditions at parity to that provided by GTE to itself or any other party.

AT&T must be allowed to access all possible pathways to its customers, including entrance facilities, cable vaults, equipment rooms, and telephone closets. In regards to collocation, GTE must provide physical collocation where space is available. Where space is not available, GTE must provide to AT&T virtual collocation. The Commission believes that AT&T's requests are reasonable and result in non-discriminatory access as intended by the Act.

(10) (Original issue No. 18) Must GTE provide interim number portability solutions including remote call forwarding, flex-direct inward calling, route index-portability hub, and local exchange routing guide reassignment?

Where technically feasible, GTE must provide interim number portability. If a dispute should arise concerning technical feasibility of interim number portability, the parties may submit those disputes to the Commission for resolution on a case by case basis. We believe our ruling here is in compliance with 47 U.S.C.A. 251(b)(2). We therefore require GTE to provide the following interim number portability solutions: remote call forwarding, flex direct inward calling, route indexing portability hub, and local exchange routing guide.

(11) (Original issue No. 20) Must GTE be prohibited from placing any limitations on interconnection between two carriers collocated on GTE's premises, or on the types of equipment that can be collocated, or on the types of uses of the collocated space?

Yes. The Commission orders GTE to allow collocation for interconnection with GTE and other collocated providers at all GTE network facilities, unless GTE makes an appropriate showing that it is not technically feasible to allow collocation at a given facility.

(12) (Original issue No. 21) Must GTE provide AT&T with access to GTE's unused transmission media ("dark fiber")?

We conclude that dark fiber is a network element because it is a facility or equipment used in the provision of a telecommunications service. Provision of unused transmission media will facilitate the development of competition. Denial of access to such unused facilities to AT&T and other new entrants may delay their entry into the market to provide competitive services to South Carolina consumers. The Commission therefore adopts AT&T's position on this issue and orders GTE to provide AT&T with access to GTE dark fiber. Parties may file complaints of alleged abuse of the purchase of dark fiber with the Commission.

(13) (Original issue No. 22) Must appropriate wholesale rates for GTE services subject to resale equal GTE's retail rates less all direct and indirect costs related to retail functions? (See Issue No. 15 below)

(14) (Original Issue No. 23) Should GTE's wholesale prices exclude any new costs GTE claims to incur because of selling at wholesale? (See issue No. 15 below).

(15) (Original issue No. 24) What are the appropriate GTE wholesale rates?

The Commission considers together these three issues

regarding GTE wholesale rates. In light of our previous decision in Order No. 97-189, we utilize a similar methodology to determine the applicable rate in this docket. Again, we do not agree that all of the costs of operator services (such as call completion and number services) would continue to be experienced. The Commission believes that 30% of the costs would be avoided due to the direct routing of calls to AT&T that has been mandated by the Commission. The Commission also believes that costs of market management, market research, supervision and support expenses for job class functions of product management (Account 6611) should be taken into account when determining the avoided cost for this account. The Commission therefore assigns the percent avoided in this category as 25%. Similarly, we adjust the percentages of avoided costs in Account 6612 and assign 90% to that category. To the customer service category, Account 6623, we assign 65%; to the product advertising account, we assign 94%. We therefore arrive at an overall discount of 18.66% upon making these noted changes. We base our calculations generally on the Act's avoided cost standard and therefore calculate the wholesale discount based on the fact that GTE will continue to operate in a wholesale and retail environment.

(16) (Original issue No. 25) Must total element long run incremental cost ("TELRIC") be used to price unbundled network elements; call transport and termination; interconnection; collocation; rights-of-ways, poles, ducts and conduits; interim and permanent number portability; AIN;

and unused transmission media?

GTE must file verifiable cost studies using TELRIC methodology within 90 days of the date of this Order. The interim rates will be rates approved by the Commission in BellSouth/ACSI's negotiated agreement (Docket No. 96-262-C). The difference between the interim rates charged and the price development cost studies will be trued-up between the parties.

(17) (Original issue No. 26) What is the appropriate price, including non-recurring charges for each unbundled element AT&T has requested?

The rates contained in Docket No. 96-262-C (BellSouth/ACSI) shall be utilized as the interim prices for unbundled network elements. Again, GTE shall furnish verifiable cost studies using TELRIC methodology within 90 days of the date of this Order. As discussed above in item number 16, the prices will be trued-up between the parties.

(18) (Original issue No. 27) What is the appropriate price for call transport and termination?

We hold that the FCC proxy rates shall be used as an interim rates. Verifiable cost studies shall be provided to the Commission within 90 days after the date of this Order and settlement shall be trued-up to reflect cost study prices.

(19) (Original issue No. 28) Is "Bill and Keep" an appropriate alternative to the terminating carrier charging TELRIC?

Terminating access associated with local calling and EAS

arrangements will be paid by the Parties until such time as this traffic becomes roughly equal. At the time when traffic becomes roughly equal between the Parties, the Commission will consider a "Bill and Keep" methodology for use between the Parties.

(20) (Original issue No. 29) What is the appropriate price for certain support elements relating to interconnection and network elements?

Please see answers to 25 and 26 above as these discussions are applicable.

(21) (Original issue No. 30) What should the term of the agreement be, and should the agreement be implemented without impairing GTE's right to file tariffs in the normal course of business? Or, should the terms and conditions of the agreement not be subject to modification through subsequent tariff filings?

We hold that the term of the contract should be three years.

RURAL EXEMPTION

This Commission opened Docket No. 96-256-C as a result of two letters from GTE South, Inc. to the Commission dated June 20, 1996, and July 19, 1996, advising of its intent to claim exemption from the requirements of 47 U.S.C.A. 251, as amended, of the Telecommunications Act of 1996 pursuant to the exemption for "rural telephone companies" contained in 47 U.S.C.A. 251(f)(1)(A) and the definition of a "rural telephone company" (47 U.S.C.A. 153(37)(C)). Those letters claimed the exemption for only that portion of GTE's

territory in South Carolina that was served by Contel prior to Contel's acquisition by merger into GTE. The second letter emphasized that the exemption was claimed only for the former Contel service area.

In response to those letters, AT&T filed with the Commission on August 7, 1996, its opinion that GTE was not entitled to the exemption. The Commission then opened Docket No. 96-256-C to determine whether GTE was entitled to the exemption. GTE filed an answer, claiming the exemption not only for the former Contel service area, but also for its entire service area in South Carolina, pursuant to the alternative definition of "rural telephone company" (47 U.S.C.A. 153(37)(D)).

On December 19, 1996, the Commission held a hearing on whether GTE or any portion of its South Carolina service area qualified for the "rural telephone company" exemption under 47 U.S.C.A. 251(f)(1)(A). Both GTE and AT&T presented witnesses on the subject. The applicability of the Section 251(f)(1)(A) exemption to GTE depends entirely on whether GTE meets the definition of "rural telephone company" set forth in Section 153(37) of the Act. That Section contains four alternative definitions of "rural telephone company." GTE relies on the definitions contained in subsections (C) and (D). During the Arbitration hearing, both GTE and AT&T revisited the issue and presented testimony as to why the GTE exemption should or should not be lifted, if one exists at all.

Section 153(37)(C) defines a "rural telephone company" as

"a local exchange carrier operating entity to the extent that such entity ... provides telephone exchange service to any local exchange carrier's study area with fewer than 100,000 access lines." GTE relies on this definition to support its claim that its operations in the former Contel service area constitute a "rural telephone company."

Section 153(37)(D) defines a "rural telephone company" as "a local exchange carrier operating entity to the extent that such entity ... has less than 15% of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996." GTE relies on this definition to support its claim that its entire South Carolina operations constitute a "rural telephone company."

GTE, at the holding company level, described itself in its own 1995 Annual Report as the largest local telephone company in the nation, as it has \$20 billion in annual revenues and over 24 million access lines. Its capital investments in 1995 totaled nearly \$4 billion.

The Federal Communications Commission's ("FCC") First Report and Order, Order No. 96-325 (the "FCC Order"), implementing the Act and promulgating regulations thereunder, appears to recognize that large entities should not be allowed to claim the rural exemption, since it made specific reference to GTE in the context of the Section 251(f)(2) allowance of suspension or modification for carriers with fewer than 2% of the nation's access lines. Section 251(f)(2) is apparently not nearly as favorable as Section 251(f)(1), since it is not automatic but requires a strong

showing of need. It does not provide an exception from all of the Section 251(c) requirements, but only from those that the incumbent local exchange carrier can demonstrate are burdensome, unfeasible, contrary to the public interest, etc. In holding that the 2% test of Section 251(f)(2) should be applied at the holding company level, the FCC stated as follows: "Any other interpretation will permit almost any company, including Bell Atlantic, Ameritech, and GTE affiliates, to take advantage of the suspension and modification provisions in Section 251(f)(2)." See FCC Order at Paragraph 1264. Thus, the FCC states that a conclusion that would give GTE even less favorable treatment of Section 251(f)(2) is, for that reason, wrong, and therefore adopts the contrary conclusion.

In rejecting claims by GTE identical to the claim before this Commission, both the Minnesota and Pennsylvania Commissions have rejected said claim by stating that they could not understand why Congress would enact a comprehensive regulatory scheme and then subsequently exempt large portions of the service territory of one of the nation's largest LECs from application of the scheme.

CLAIM UNDER SECTION 153(37)(C) FOR FORMER CONTEL SERVICE AREA

GTE contends that the area served by Contel of South Carolina, Inc., prior to the acquisition by and merger into GTE, should be considered separate from the remainder of GTE's service area in South Carolina for purposes of the definition of "rural telephone company" in Section 153(37)(C), because it was a separate study area served by

Contel and has fewer than 100,000 lines. GTE claims that it has not elected to treat the two study areas (former Contel and former GTE) as one, according to GTE witness Meade Seaman, but, as that witness also noted, the separation of study areas is maintained to determine issues relating to universal service and high cost fund support.

It appears to this Commission that GTE, including the former Contel service area, is an integrated, mutually-supporting operation. It files a single annual report with the Commission. GTE and Contel merged, and, since March 14, 1991, have "proceeded to consolidate and integrate their operations in order to achieve more efficient and effective operations and more efficient utilization of technology and network resources." See Commission Order No. 94-319. The corporate charter of Contel of South Carolina, Inc., has been dissolved by the South Carolina Secretary of State. GTE and Contel are operating under a single unit. In the single Annual Report filed by GTE with the Commission for the year ending December 31, 1995, GTE reported that it was actually serving over 180,000 access lines in South Carolina, which is well above the 100,000 limit for the exemption, and above the 19,889 lines cited by GTE as the number of access lines in the area served only by Contel, prior to its acquisition by GTE. The merger in itself demonstrates that GTE has elected to treat the two areas as one. We would note that the map of service areas prepared by the South Carolina Telephone Association, of which GTE is a member, shows the former GTE and former Contel service areas with a single

color code as the GTE service area.

It appears to this Commission that the merged study area of GTE, including the acquired and now defunct Contel, should not be regarded as separate study areas for purposes of Section 153(37)(C), and GTE's request for the "rural telephone company" exemption for a portion of its current service area in South Carolina should be denied.

CLAIM UNDER SECTION 154(37)(D) FOR ENTIRE

GTE SOUTH CAROLINA OPERATIONS

GTE next contends that its entire operations in South Carolina should be exempt as a "rural telephone company," because it constitutes a "LEC operating entity" that has "less than 15% of its access lines in communities of 50,000 or more" as of February 6, 1996. GTE's contention is not persuasive. GTE attempts to restrict the definition of "LEC operating entity" to its South Carolina operations. The corporate entity, GTE South, Inc., is not solely a South Carolina operation but extends across several southern and other states. GTE South, Inc., is simply a part of a much larger operating entity, GTE Telephone Operations, which has operations in 28 states according to GTE witness Seaman. GTE appears to be a single operating unit across the nation.

GTE's definition of "community" must be given consideration. According to GTE witness Seaman, the word "community" means "a group of people living in the same locality and under the same government." Seaman also stated that the proper definition of "community" should be a political subdivision. The Commission notes that under

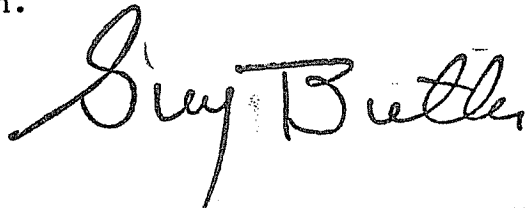
Articles VIII and X of the South Carolina Constitution, under portions of the Code of Laws of South Carolina (1976), particularly Titles 4 and 6; under Section 103 of the United States Internal Revenue Code of 1986, as amended; and under Section (3)(a) of the Federal Securities Act of 1933, "political subdivisions" include counties. Given GTE's own definition, one need look no further than Horry County to determine the issue in this Docket, even accepting for the sake of argument that only South Carolina is the "operating entity." As shown on GTE's Annual Report filed with the Commission for the year ended December 31, 1995, GTE had working access lines in Myrtle Beach Main, Oceanview, Little River, and Conway totaling 48,037. That is substantially in excess of 15% of the 180,487 GTE access lines in South Carolina. The population of Horry County as of April 1, 1990, according to the Bureau of the Census, was 144,053. According to the Bureau of the Census estimates, that population has grown, as of July 1, 1995, by over 9.6% to 157,900. Moreover, the Horry County/Grand Strand area appears to be a community in other ways as well. There is a shared livelihood based on recreation and tourism. There is a single school district for the county. The county constitutes a single metropolitan statistical area. The area is part of a Measured Extended Access Plan. GTE itself publishes a single telephone book for the area which taps the "Grand Strand area stretching from Little River to Georgetown." In sum, it appears that there can be no doubt that, even looking only at South Carolina as the operating

entity, much more than 15% of GTE's access lines are in a community of more than 50,000, and that GTE is not a "rural telephone company" under Section 153(37)(D).

The FCC has determined that the party seeking an exemption should have the burden of proof. See FCC Order, Paragraph 1264 and 47 C.F.R. Section 51.405 (a),(c). GTE has not met the burden of showing that it is a "rural telephone company". Indeed the contrary has been shown. Based upon the above-stated reasoning, the claimed rural telephone company exemption for GTE is hereby denied.

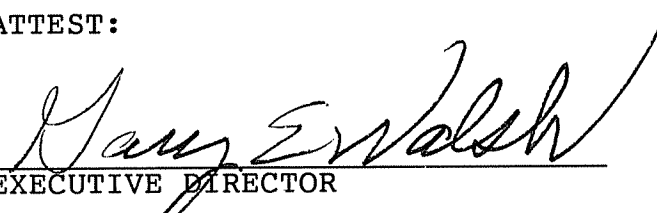
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION.



CHAIRMAN

ATTEST:



Deputy EXECUTIVE DIRECTOR

(SEAL)